

**From:** Eric Butler Evans  
**To:** Microsoft ATR  
**Date:** 1/23/02 10:44am  
**Subject:** Microsoft Settlement

Tunney Act comment:

My comments concern the enforcement provisions of the Proposed Final Settlement. The provisions seem to assume that Microsoft will make a good faith effort to comply with the provisions of the PFS. This assumption is not justified. Microsoft has demonstrated contempt for the Court in all of its interactions with the Court; there is no reason to believe that it will comply more effectively with the PFS than it did with the 1994 consent decree.

The enforcement provisions provided in IV, B of the Proposed Final Settlement are inadequate for the following reasons:

- 1) The enforcement provisions rely on ongoing monitoring efforts by the states acting as a committee. (IV, B, 1); this system of governance will result in a reduction in the efficiency of the monitoring process as the states have already demonstrated that their interests are not identical by splitting in their acceptance of the Proposed Final Settlement.
- 2) The enforcement provisions prevent the states from disclosing information revealed by Microsoft in the process of enforcement (IV, A, 2, b).
- 3) Microsoft is given a role in the selection of the Technical Committee (IV, B, 3). Given Microsoft's previous history of disregard for consent decrees and other legal sanctions, the likelihood that Microsoft will use its appointment power to undercut the effectiveness of the TC is high.
- 4) Given the powers of the TC (IV, B, 8), it will require an extremely large staff. The expense of monitoring Microsoft's compliance, especially given the company's past history of grudging and incomplete compliance with the 1994 consent decree, will be very substantial.
- 5) Microsoft is given the power of appointing the Compliance Officer (IV, C, 1). Given the company's past history of grudging and incomplete compliance with the 1994 consent decree, it is unlikely that the company will appoint a CO who will attempt to comply with the present settlement in good faith.
- 6) The powers to the TC and CO do not extend beyond acceptance of complaints from 3rd parties which can be forwarded to Microsoft to "accept or reject" (IV, D, 3, c) or proposing cures (IV, D, 4, c). Without the authority to mandate cures, the enforcement authority will be ineffective, given Microsoft's history of evading consent decrees.

Microsoft's crimes demand a structural remedy, not the establishment of a powerless "compliance" authority.

Sincerely,

Eric

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Eric Evans